OGC Has Reviewed

29 December 1954

MEMORANDUM FOR: Mr. Houston

SUBJECT: Personal Use of Official Vehicles

1. The Logistics Office recently requested an opinion from us as to liability of employees for damages resulting from the use of quasi-personal vehicles for personal business. While discussing the problem within the office a Court of Appeals case was discovered which may be of sufficient application to bring to the attention of the Director in connection with his use of the vehicle assigned to him.

2. The case (Phelps v. Boone, et al, 67 F. 2nd 574) concerns a Navy officer assigned as physician to the White House in 1932 who was provided by the Navy with an automobile and chauffer "so that he could be in touch with the White House at all times." An accident occurred while the officer, his wife, and two guests were being driven back to Washington from Baltimore where they had gone for dinner with friends and to attend the opera. The negligence of the Government driver was not in dispute. The physician denied personal liability on the ground that, since the automobile was assigned to him to enable him to respond to calls from the White House, its use by him on the evening in question was in his official capacity; further, that since the driver of the automobile was a Navy enlisted man assigned to that duty and answerable to the Navy Department, there was lacking sufficient control and direction to allow the doctrine of respondeat superior to apply to the physician. The Court of Appeals decided, however, that the use was a personal one and that when the physician assumed the right to use and control the car and driver for a private purpose, he assumed responsibility for the consequences of such use and control. Reversing the trial court, the Court of Appeals held that the physician was liable for the negligent acts of the Navy driver while operating the automobile for his benefit. From the fact that certiorari was subsequently denied by the Supreme Court and the fact that the case was cited with approval by the Court of Appeals for the District of Columbia as recently as June 10, 1954 (see Baber et al v. Akers Motor Lines Inc, 215 F. (2d) 843), I can only assume that the principle stated therein is still applicable.

3. It is my understanding that the assignment of an automobile to the Director is based upon considerations similar to those in the quoted case. You may therefore wish to suggest to the Director that he consult his insurance carrier to secure adequate protection against this potential hazard.